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ABSTRACT

A study requested by the National Commission on Libraries and Information Science surveys the relationship between government and the private sector and the use of the private sector information firms by government; examines examples of government agency activities in disseminating information themselves and through the use of private sector information firms; and discusses the need for development of and adherence to a coherent and positive national policy. The economic relationship between government and the private sector and the benefits accruing to society from the use of incentives in the competitive marketplace of ideas are discussed as a basis for national policies for exploiting these incentives in the development of the proposed national program. (Author/LS)

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THE RELATIONSHIP OF THE GOVERNMENT AND THE PRIVATE SECTOR IN THE PROPOSED NATIONAL PROGRAM

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VICE PRESIDENT, DISCLOSURE, INC.

Surveys relationship between government and the private sector and the use of the private sector information firms by government; examines examples of government agency activities in disseminating information themselves and through the use of private sector information firms; and discusses the need for development of and adherence to a coherent and positive national policy. The economic relationship between government and the private sector and the benefits accruing to society from the use of incentives in the competitive marketplace of ideas are discussed as a basis for national policies for exploiting these incentives in the development of the proposed national program.

NOVEMBER, 1974

The views expressed are those of the author and do not necessarily reflect the position or policy of the NCLIS. Though related to the Commission's National Program, papers in this series are not an integral part of the National Program Document.

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INTRODUCTION

A discussion of the relationship between the government and the private sector is grounded on one issue - competition with the private sector. For if the government provides goods and services for its own use or to the public that could be provided by the private sector, there is no relationship. The is issue is real - the Department of Commerce estimated that over 400,000 Federal employees are engaged in commercial and industrial activities that are competitive with the private sector. Examples range from publishing and printing, ADP operations and programming, microfilming, communications, and research and development to office machine repairs and janitorial services.

This paper will discuss the previous federal policy towards establishing the relationship and its underlying rationale based on various Congressional recommendations; how a significant change in executive policy was made and the effect of this change; and recent recommendations made to change this policy.

Practices permissible within present executive policy and regulations are recommended to make the private sector an active partner in the development of the proposed National Program.

The definition of "private sector" set forth in the 2nd draft (rev.) of the National Program document is used, however no attempt has been made to conform the other terms used to describe the private sector.

A. EXISTING POLICIES AFFECTING GOVERNMENT/PRIVATE SECTOR RELATIONSHIPS

1. Congressional Legislative Policies and Statutes

Congressional recommendations have consistently supported a reliance on the private sector for needed goods and services

The issue of Government competition with the private sector has been extensively studied by the Congress. In 1933, a special committee of the House of Representatives recommended that the executive agencies of Government investigate any of their activities competitive with private business..

> to the end that there be a liquidation of all such bureaus, subdivisions or agencies under their control competing with private trade, commerce, finance, industry, or the professions, the operations of which are not in the public interest."

The Intergovernmental Relations Subcommittee of the House Committee on Government Operations reported in 1953 that the number of commercial and industrial activities of the Government that compete with private business posed a real threat to private industry and imperiled the tax structure.

The 83rd Congress established the Second Hoover Commission and directed the Commission to make studies and recommendations relative to...

> eliminating nonessential services, functions, and activities which are competitive with private enterprise..."

The Commission's report offered numerous recommendations designed to eliminate or decrease substantially activities of the Government that competed with private enterprise.

Congressional hearings and interest in the 1960's centered on the practice of using private sector personnel to perform services under the direct supervision of Government personnel and the effect of this practice on Government career personnel.

In 1972, the Department of Commerce published a study of the current executive regulations establishing the relationship with the private sector. The study noted that...

> The general consensus of Congressional recommendations has been in favor of the policy of reliance on private enterprise. Congress has recognized the value of this policy in supporting the National economy and maintaining a sound tax base. More recent hearings, directed specifically at service contracts, have not questioned this fundamental policy, but have been concerned only with the mechanics and details of implementation. This clear mandate from Congress, however, has not been consistently followed in Government operations."

Various interest groups have testified before recent Congressional hearings on the issue of Government competition, but no legislative recommendations from any congressional committee are expected in 1974.

<u>There is no legislation which expresses a policy of reliance on the private sector for needed goods and services</u>

There is one narrow exception. It is Title III of the Intergovernmental Cooperation Act of 1968, which authorizes Federal agencies to provide certain specialized and technical services to State and local governments. The act requires

that rules and regulations be established by the Bureau of the Budget under which the Director determines what services may be provided.

> Such rules and regulations shall be consistent with and in furtherance of the Government's policy of relying on the private enterprise system to provide those services which are reasonably and expeditiously available through ordinary business channels."

For various reasons, legislation directed to this issue has not been passed by Congress. There was no requirement for legislation due to the intervening effects of the 1930's depression, World War II, and the fact that government procurement did not have the powerful economic impact which developed after World War II.

In 1955, legislation was introduced by the Chairman of the Senate Government Operations Committee which would have established a Federal policy concerning the termination, limitation, or establishment of business-type operations of the Government conducted in competition with private enterprise.

Upon assurances from the Director of the Bureau of the Budget that the policy expressed in the proposed legislation had already been implemented by the Executive Branch, further action in Congress was postponed.

The growing strength of the Federal employee labor unions

and Civil Service Commission rulings concerning the use of private sector personnel as a substitute for Civil Service employees have slowed later legislative recommendations.

The Commission on Government Procurement in its report to the Congress provided a review of the history of congressional efforts to develop and implement an effective policy directed to this issue and stated...

> We believe, as a first step toward its resolution, there should be a clear expression in law of the Government's policy for relying on the private sector for goods and services."

2. Executive Regulations Governing -

a. Federal/private sector relation

<u>Earlier executive regulations supported a reliance on the private sector in both the statement of policy and in the implementation</u>

In 1954, the Deputy Director of the Bureau of the Budget testified before a House committee on a number of bills pending on the subject of government competition with the private sector. He referred to a campaign statement made by President Eisenhower...

> To bring government closer to the people we will set up these principles and adhere to them; That no Federal project large or small, would be undertaken which the people can effectively do or be helped to do for themselves; that no Federal project will be undertaken which private enterprise can effectively undertake; that no project and no program will be started on the Federal level which can be undertaken and effectively carried through on the State or local level."

He indicated that,accordingly, the executive had initiated a program to "...reduce or terminate, wherever compatible with

the national interest, Government competition with private enterprise." In January 1955, this policy was promulgated by the issuance of Bulletin No. 55-4.

In 1956, a Bureau of the Budget memorandum concerning the progress of the executive's program noted that the decision to continue or discontinue an activity did not depend on whether the product or service could be produced more cheaply outside the Government. As a general rule, the policy was adopted that the apparent cost of a particular product or service...

> will not be a deciding factor where adequate competition exists."

Reasons stated were:

> 1. The cost of Government operations are not comparable with corresponding business costs. The Government, for example, pays no income taxes and operates its own tax-free facilities, thereby keeping costs down.
>
> 2. Government accounts are not kept in the same manner as business accounts, so that a comparison of the operating costs of Government versus business, for example, is not only difficult but often misleading.
>
> 3. Above all, the decision whether to continue or discontinue a Government activity solely on an apparent cost basis runs counter to our concept that the Government has ordirarily no right to compete in a private enterprise economy."

This Bulletin was modified in 1959 to add guidelines for determining compelling reasons for a Government agency to produce goods or services for its own use. These reasons were...

1. National security

2. Relatively large and disproportionate high cost

3. Clear unfeasibility - not available commercially in the foreseeable future, the product or service was an integral part of the agency's basic mission, or administratively impractical to contract for a service or product

The exception for large and disproportionately high cost, in practice a comparative cost analysis, was added since the Bureau of the Budget found that...

> ...the costs of Government operations and private procurement could be usefully compared provided they were both fairly computed and complete."

The costs of a comparable Government operation would have to cover...

> ...all direct and indirect outlays as well as elements not chargeable to current appropriations. Costs attributed to procurement from private sources would also have to be computed on an equally fair and complete basis."

Since some Government costs included in the analysis could only be estimated...

> ...the principle was developed that procurement should be from commercial sources unless the differences in comparable costs was relatively large and disproportionate."

These guidelines were clear and capable of consistent implementation. They recognized that in determining the <u>total</u> costs of a government operation, only estimates of certain cost elements could be prepared, therefore, a competitive government activity was permitted only if the cost comparison showed a large and disproportionate difference between the government activity and a private sector source.

A significant change in executive policy occurred in 1966 and 1967 influenced by: congressional reports of the effect that contracting for services was having on career Government employees, an opinion of the Civil Service Commission holding that contracts under which Government personnel directly supervise contract employees are illegal, and a strong move by President Johnson's administration to create at least an appearance of economy in Government.

The current regulations introduced a biased cost comparison between the incremental or additional costs of a Government activity and the costs from a private source

In 1966, Bulletin 60-2 was replaced by Circular A-76. The Circular was modified in 1967 to provide additional cost guidelines.

The Circular sets forth the policy for acquiring commercial or industrial products and services for Government use. A general policy of relying on the private enterprise system to supply the Government's needs is restated, but a relative cost comparison was added which has provided the largest difficulty with the policy from the viewpoint of both government and private sector representatives.

The Circular is applicable to commercial and industrial products and services used by executive agencies. It does not apply to activities of the legislative or judicial branches such as the Government Printing Office and the Library of Congress.

Although the policy of relying on the private enterprise system is stated, there is no prohibition against procurement of products or services from institutions not generally considered part of the private enterprise system.

The Circular requires that executive agencies perform the basic functions of management necessary to retain essential control over their programs. They are...

1. Selection and direction of Government employees
2. Assignment of organizational responsibilities
3. Establishment of performance goals and priorities
4. Evaluation of performance

Agencies may obtain from a private source or Government staff organizations,managerial advisory services such as an office of general counsel, a management and organization staff, or a systems analysis unit.

The Circular does not apply to products or services which are provided to the public. Although it indicates that products or services used in developing the product or service provided are to be obtained in accordance with Circular guidelines, an agency can provide to the public, free or by sale, items in competition with the private sector.

The "compelling reason" language of the earlier regulations which permitted the establishment of an in-house government activity was deleted,and an agency may provide a product or service for its own use when...

1. Procurement from a commercial source will disrupt or materially delay an agency's program

2. Maintenance of combat support or mobilization readiness is required

3. A satisfactory commercial source is not available and cannot be developed in time

4. The product or service is available from another agency

An agency may intitiate an in-house activity if a comparative cost analysis shows that...

5. Procurement of the product or service from a commercial source will result in higher cost to the Government

The Circular does not require that a cost comparison be performed prior to obtaining a product or service from the private sector. Agency implementing instructions vary on this point. Under certain circumstances, Department of Defense instructions require a cost comparison prior to contracting with the private sector. Department of Health, Education and Welfare instructions repeat and do not change the Circular.

If a cost comparison is developed, the cost of obtaining the product or service from the private sector includes the amount paid to the contractor plus the administrative cost of preparing Requests for Proposals and Invitation for Bids, evaluating proposals and bids, and awarding and managing the contract. In other words, the full cost to be borne by the Government.

The Circular states that the estimate of costs of a government in-house activity should include all costs...

> Which would be incurred if a product or service were provided by the Government and which would not be incurred if the product or service were obtained from a commercial source. The objectives should be to compute, as realistically as possible, the incremental or additional cost that would be incurred by the Government."

In other words, not the full cost to be borne by the Government, but only the incremental or additional costs. Start-up costs, depreciation of existing equipment, State unemployment taxes and State and local taxes not paid by the private sector are not included in the analysis. In addition, it is difficult for government personnel performing this analysis to obtain proper cost estimates for utilities, facilities and services, and maintenance of equipment.

Example of incremental versus full costing

The Department of Commerce study included an example of the Circular costing techniques developed during a 1968 study by the General Accounting Office of an Atomic Energy Commission program. The two methods of costing show a wide discrepancy in the results.

Full Costing

	Finished Part	Unfinished Part
Commercial production	$316.95	$471.37
In-House production	319.43	468.43

Incremental Costing

Commercial production	$312.45	$466.87
In-House production	145.43	195.46

Under the incremental costing method, the cost of commercial procurement is slightly less, since the AEC did not allocate any existing administrative or indirect cost to the procurement action. The estimated cost of AEC in-house production however is 60% less under this method.

The Circular states that an in-house activity should not be approved unless costs will be at least 10% less than the costs of obtaining the product or service from commercial sources. Since this differential is added to the incrementally costed figures of $145.43 and $195.46, it is obvious that the differential would have no effect in changing any decision as to in-house production or procurement from a commercial source.

In summary, the Department of Commerce study noted that...

> ...it is clear that cost comparability cannot be achieved. The Office of Management and Budget Circular A-76 costing guidelines favor the in-house provision of goods and services and thereby subvert the Government's stated policy of relying on the private sector to provide its products and services."

b. States/private sector relation for activities funded by the Federal Government

<u>Federal regulations do not address the issue of competition with the private sector</u>

The regulations establishing uniform administrative requirements for grants-in-aid to state and local governments are contained in OMB Circular No. A-102. This Circular was recently reissued as General Services Administration Federal Management Circular (FMC 74-7) with no substantive change.

No guidance or policy is set forth in the Circular concerning the relation of the private sector to the recipients of Federal grants-in-aid. Procurement standards are included however which require that procurement by the grantees "...shall be conducted in a manner so as to provide maximum open and free competition."

3. State statutes and regulations

An extensive study will be released in the near future

A study of state and local government purchasing is currently being performed by the National Association of State Purchasing Officials and Peat, Marwick, Mitchell & Co., under the sponsorship of the Law Enforcement Assistance Administration.

The study is directed to the acquisition and utilization of goods and services, and its scope extends from state and local laws to written policies and day-to-day practices. Its objective is to recognize and identify differences in public purchasing laws and practices and to highlight those characteristics that promote strong and effective programs.

The final report was scheduled for release in the late summer of 1974, and a review of the report had been expected for the purpose of preparing this section. Its release has been delayed and the existence of the study and its applicability can only be noted at this time.

A preliminary finding of the study should be noted - that competitive negotiation procedures should be utilized for the

procurement of high technology items and professional services. Competitive negotiation procedures differ from the typical sealed bid award in that negotiations follow receipt of proposals to ensure that the best price and terms are obtained. Sealed bid procedures are used when a complete purchase description can be stated, and the lowest qualified bidder receives the contract award.

4. Judicial decisions

A Supreme Court decision has provided an avenue for future judicial relief from unfair government competition

In December 1969, the City of Pittsburgh enacted an ordinance which placed a 20% tax on the gross receipts of parking garage operations in the city. The city, which operated approximately 25% of the spaces covered by this ordinance, was exempt from the tax. Several private garage operators filed suit to enjoin enforcement of the ordinance alleging it was invalid under the Equal Protection and Due Process clauses of the 14th Amendment.

Two Pennsylvania lower courts upheld the ordinance, but the Pennsylvania Supreme Court invalidated the ordinance and considered the issue of government competition by noting...

> This government enterprise competing with private industry adds not only a new and most significant dimension to the traditional constitutional problem of what constitutes a taking without due process but also an impermissible one."

The U.S. Supreme Court reversed this decision in a

unanimous opinion on the grounds that it has consistently refused to pass on the reasonableness of a tax that is within the power of a state legislative authority to impose or to hold that a tax is unconstitutional since it makes a business unprofitable. On the question of fair competition, the Court's reasoning was centered on the fact that there was a shortage of parking spaces in Pittsburgh and no business had been lost by the private garage operators.

Mr. Justice Powell concurred with the decision but separately emphasized his understanding that...

> ...today's decision does not foreclose the possibility that some combination of unreasonably burdensome taxation and direct competition by the taxing authority might amount to a taking of property without just compensation in violation of the Fifth and Fourteenth Amendments."

This statement provides a possible avenue for judicial relief, if a combination of burdensome taxation and direct competition by either a State or local government body or the Federal Government is found. Such combination would effectively expropriate a private business for public profit and would entitle the private business to just compensation.

B. IMPLEMENTATION OF EXISTING POLICIES

Present Circular regulations are not uniformly implemented, and justifications for in-house activities are frequently not valid

The Commission on Government Procurement found that the...

> ...rationales for the creation of Government commercial and industrial activities are as diverse as the activities themselves,"

and that a new approach and stronger implementation of the program to review and justify in-house activities is needed, "...to achieve consistent and timely Government-wide application of the policies set forth in Circular A-76."

The General Accounting Office found a lack of explanations supporting many Government recommendations to continue in-house activities. The Department of Commerce found the most frequent justification for Commerce in-house activities was that a commercial source was not available, or its use would delay a program. These Commerce activities included information services such as miscellaneous publishing, commercial printing, typesetting, aerial photography, microfilming and graphic arts; most were in the Washington area and duplicated services readily available from the private sector.

1. Use of private sector information firms by the Federal Government

   a. Creation of information

Private sector information products are effectively used, but the government offers competitive products

Products range from dictionaries and technical books and journals to computer programs and software. Many information

products are created by government agencies and their contractors however, and are sold to the general public in competition with those provided by the private sector. Examples reflect information not unique to government activities, such as construction manuals, PERT scheduling techniques, information theory, surveys of manufacturers, software of a general nature, such as report generators, and software application programs for payroll and accounting systems.

Private sector information products must eventually be self-sustairing - incremental cost techniques are rarely available. The Federal Government however is not required to consider the cost of creating the information offered to the public.

The sale of competitive products by the government lessens the revenue bases and erodes the capability of the private sector to continue the creation of new information products for the benefit of the public and the government.

b. Management of information dissemination

Private sector firms manage complex information dissemination programs for the government

An example is the program established by the Securities and Exchange Commission. The program is run by Disclosure, Inc. under contract with the SEC and at no cost to the SEC.

Approximately 100,000 financial reports received each year by the SEC are disseminated in microfiche and paper copy to

the general public and other government agencies. Extensive bibiliographic controls have been established and monthly and cumulative indexes are sold together with approximately 3,000,000 copies of the reports.

Complex central information facilities are operated for the government by Informatics Tisco, Inc.- NASA's Scientific and Technical Information Facility - and Operations Research, Inc. - the National Institute of Education's ERIC Processing and Resource facility

The skills required to properly operate and manage these programs include technological and entrepreneurial skills concerning the investment of capital and marketing to ensure the effective use of such capital.

c. Government information dissemination programs

They are facing increased pressures to become self-sustaining

Two significant examples of government information dissemination programs are the Government Printing Office and, the National Technical Information Service. Congressional pressures and actions to make these activities self-sustaining have increased. The prices of their products have increased and in some cases, the price is higher than a comparable product sold by a private sector firm for the government.

Marketing efforts to increase sales and make the activity self-sustaining have increased. But in order to obtain the flexibility necessary to achieve this objective, the Director of NTIS proposed earlier this year that NTIS be established as

a quasi-public agency somewhat similar to COMSAT. This flexibility is an advantage a private sector firm has. It can shift resources quickly in order to take advantage of new opportunities, handle peak workload problems, and cut back and reduce operations when necessary.

C. POTENTIAL CHANGES TO EXISTING POLICIES AFFECTING GOVERNMENT/PRIVATE SECTOR RELATIONSHIPS

1. Recommendations of the Commission on Government Procurement

Recommendations made by the Commission favor a greater reliance on private enterprise for needed goods and services

The Commission was created in 1969 to recommend methods to Congress that will "...promote the economy, efficiency, and effectiveness..." of procurement by the executive. The Commission was a bipartisan body with members from the Congress, the Executive Branch, the "public sector", plus the Comptroller General of the United States.

The Commission had a large full-time professional staff, and extensive effort was expended over a two year period. The Commission made 149 recommendations. Some have been implemented by executive regulation and some by legislation. A group has been established within the General Accounting Office to monitor the implementation of these recommendations and progress reports are provided to Congress.

The Commission made the following recommendations:

> Provide through legislation that it is the national policy to rely on private enterprise for needed goods and services, to the maximum extent feasible, within the framework of procurement at reasonable prices. (Recommendation 22)
>
> Base cost comparisons on:
>
> (a) Fully-allocated costs if the work concerned represents a significant element in the total work load of the activity in question or if discontinuance of an ongoing operation will result in a significant decrease in operations costs.

(b) An incremental basis if the work is not a significant portion of the total workload of an organization, or if it is a significant portion in which the Government provided a substantial investment. (Recommendation 24)

In its discussion of Recommendation 24, the Commission noted that...

> It is generally agreed by Government and industry personnel that the method used in determining the cost of Government activities in some cases may bias cost comparisons in favor of in-house performance."

But, they indicated that one major problem exists if the alternative total cost method is adopted - government accounting records do not readily permit identification and allocation of all indirect costs and depreciation!

A dissenting recommendation was reported by 4 of the Commissioners. They did not support the concept of using any costs comparisons and recommended that a government in-house activity be permitted only if reliance on the private sector would truly disrupt or significantly delay an agency program, national defense required in-house performance, or the product or service was not and could not be made available in the private sector and was available from a Federal source. They further recommended that all practical steps be taken to encourage and develop additional private sources in the unlikely event that sufficient competitive sources were not available in the private sector.

These recommendations were formally assigned to the Office of Management and Budget as the lead agency to develop a coordinated executive branch response. GAO has reported that no substantive progress has been made by OMB in 15 months and recommended that a positive program be pursued with a firm completion date.

Any attempt to predict OMB's response to these recommendations would be speculative. They have indicated they do not have sufficient staff at this time to develop the response and that it is difficult to establish guidelines that effectively distinguish between the two situations set forth in Recommendation 24.

2. New Office of Federal Procurement Policy

OFPP has not established policies or recommendations at this time

The Commission on Government Procurement found a void in government procurement policy leadership. It recommended that a central office be established to take the leadership in procurement policy.

Legislation establishing this office within OMB was recently enacted. Mr. Hugh Witt, formerly Principal Deputy Assistant Secretary of Defense for Installations and Logistics, was appointed its Director and will report directly to the Director of OMB. In a recent interview, Mr. Witt indicated their position on the Commission's recommendations is still being developed, and if expected procurement oversight hearings are held by the

Senate this year, his office would not have any specific recommendations or comments.

3. Legislation

Legislation on the question of government competition is not expected in the near future

In the Senate, the Ad Hoc Subcommitte on Federal Procurement was established to respond to the various legislative recommendations made by the Commission of Government Procurement and to serve as a focal point for Senate legislative jurisdiction. No comparable committee exists in the House, where jurisdiction for procurement legislation rests with several Committees.

Procurement oversight hearings have been scheduled for early 1975, and testimony will be taken on the government competition issue by the Ad Hoc Subcommittee. The Subcommittee held hearings earlier this year on a bill which distinguishes between contracts and grants and requires that items and services procured for the benefit of the government must be made by a contract and not a grant. Frequently, capable for-profit firms of the private sector are excluded from a procurement, since the grant award process is used and only a non-profit or not-for-profit organization is eligible to receive the grant. The bill has passed the Senate and House action is expected after the November 1974 elections.

D. USE OF THE PRIVATE SECTOR IN THE DEVELOPMENT OF THE PROPOSED NATIONAL PROGRAM

1. Introduction

Present government policy permits the effective use of the private sector

The present executive policy is not uniformly implemented and provides a wide discretion to a government agency in the use of the private sector to implement its programs.

The following practices are recommended for the implementation of the proposed National Program. They are permissible under present policy and regulations and will permit the government to exploit and use the strengths of the various institutions of the private sector and the competitive force found in the private sector.

2. Proper role of the government

Government should rely on the private sector for implementation of its programs

Peter Drucker commented on the government's record of performance by noting...

> Government has proved itself capable of doing only 2 things with great effectiveness. It can wage war. And it can inflate the currency. Other things it can promise but only rarely can accomplish."

His comment is not made in arguing who can do a job better or cheaper, the government may in some cases "do" something better or cheaper, but that doing is incompatible with its primary purpose which is decision making.

> The purpose of government is to make fundamental decisions, and to make them effectively. The purpose of government is to focus the political

energies of society. It is to dramatize issues. It is to present fundamental choices. The purpose of government, in other words, is to govern."

An OMB official used the SST as an example of how the government failed this purpose. It tried to perform both functions - deciding and doing - at the expense of deciding. No fundamental choices were presented and a single political objective was implemented by a single company acting as an agent only of the government. The project was terminated after the required fundamental decisions were made.

Drucker argues that the private sector institutions should be used for the actual "doing" of performance, operations, and execution. That government should know their capabilities and orchestrate them much as a symphony conductor knows the performance characteristics of his musical instruments and draws best performance from each.

3. Recommended practices

A. As a matter of policy, rely on the private sector to obtain needed goods and services and encourage non-federal governments to follow this policy

The Department of Commerce and the Commission on Government Procurement noted many benefits of such policy. The total cost of goods and services would be less, tax revenues for all units of government would increase, and the technical and management skills required to develop new and innovative goods and services would remain in the private sector and be available to other units of the government and to society.

B. Provide an early opportunity for the private sector to participate in the review and criticism of specific program documents being developed

NCLIS has exhaustively solicited comments, reactions and criticisms to the widely disseminated drafts of its National Program document, but it is essentially a statement of goals and objectives, and the discussions that arose centered on the emphasis given to the various institutions of the private sector in achieving these goals and objectives.

As more specific documents are developed, specific criticism will develop which will provide...

1. Additional informations and facts for the development of specific components of the National Program

2. A better understanding of the capabilities of the various private sector institutions and how they can be utilized

An example of an early involvement with the private sector is a 2 day seminar, which will be jointly sponsored by the Federal Energy Administration and the Information Industry Association next January. Both government and private sector representatives will participate. Its purpose is to develop ideas and specific methods by which the private sector can assist and participate in the dissemination of energy information collected and generated by the Federal Government.

C. Offer to the private sector the opportunity to take responsibility for development and implementation of specific information programs

This practice can be implemented in various ways. In some instances, the offer may not be necessary since a private sector member may establish its own program without government funds or specific access to required government controlled information. Information Dynamics Corporation did not use government funds to establish its Bibnet system, which will compete with the Ohio College Library Center (OCLC) system. Both IDC and OCLC make use of the MARC tapes provided to the public by the Library of Congress. The ERIC tapes are available to the public and are used by commercial firms to create information products.

In these examples, where private risk capital or other sources of funds are available, and specific access to government information sources is not required, the decision to implement an information program will be made by the investors of the capital on projected market conditions. The government should encourage these opportunities since...

1. Resources of the private sector will be utilized instead of tax revenues

2. Government resources will be free to implement other program components where government initiative and assistance may be required.

Where specific access to information controlled by the government is required, the government can offer to the private sector the opportunity to develop information programs under

government contract. The Securities and Exchange Program is an example. In order to undertake this large dissemination program, the contractor must be assured a timely right of access to the financial reports filed with the SEC. The investment and financial market for these reports demands their quick receipt. Access to these reports is assured in the contract, and the contractor has the contractual responsibility to provide copies to the public at prices set forth in the contract.

These opportunities can be developed by a continued dialog with the private sector and by solicitation through the Commerce Business Daily for statements of capabilities from interested parties.

> D. If information products or services are required for the government's own use and they are available from the private sector, a government activity should not be initiated to provide the product or service

The NCLIS Program document states that "...government agencies should not initiate information services that can be provided by the private sector unless the cost to the government would be significantly reduced or unless the private sector service is unable to meet the government's specifications for timeliness, quality, and continuity."

As previously shown, use of the Circular A-76 cost comparison guidelines can show a significant cost difference in favor of an in-house activity, even though the total cost to the government may be higher than if procured from the private sector.

If competitive suppliers of the product or service are available, the government should rely on the competitive force of the marketplace to establish a fair price for the product or service.

If only a single supplier is available and the product or service is sold in substantial quantities to the public, the government should rely on the market acceptance of the offered price. This procedure is acceptable under current government procurement regulations. If the product or service is not sold in substantial quantities to the public, government procurement regulations require a cost analysis before contracting to assure a reasonable price. Competent procurement personnel can accomplish this.

If a product or service available from the private sector is in substantial conformance with the government's specifications for "timeliness, quality and continuity," efforts to duplicate it should not be initiated. Government agencies frequently justify in-house activities by a rather fine distinction between an offered product or service and their specifications.

E. Ensure that all private sector groups may participate in the procurement process

Even if the Senate bill distinguishing between contracts and grants is not enacted, capable for-profit firms should not be excluded from the procurement process because they cannot be awarded a grant.

F. Exploit the phenomenon of competition to the maximum extent possible

When the government provides a product for its own use, it becomes its own sole-source supplier without gaining the benefits obtained from competition. All government studies and recommendations favor the use of competition in the acquisition of products and services.

Study Group #1 of the Commission on Government Procurement noted that "...experts estimate that competitive procurement reduces costs by 25 to 50%." Further, in a competitive negotiation process for high technology items, technical and management innovation is sought and obtained in the proposals received and during the negotiation process.

The benefits of lower competitive costs and innovative proposals from qualified private sector sources can be obtained through sound procurement techniques. These techniques include seeking qualified sources through the Commerce Business Daily and other media, publicizing availability of Request for Proposals, pre-proposal conferences where the program specifications are thoroughly reviewed and criticized, and through negotiations with each offeror in the competitive range.

These practices and techniques are not exhaustive, but can provide the framework for the active participation of the private sector in the proposed National Program.

APPENDIX I

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